

26-7924

Supreme Court, U. S.
FILED

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No.

MICHAEL RODAK, JR., CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1976

IN THE MATTER OF THE PETITION OF THE
GLENVIEW PARK DISTRICT AS OWNER OF ONE
EIGHTEEN FOOT GRUMMAN ALUMINUM CANOE,
Petitioner,

vs.

EDYTHE MELHUS,

Respondent.

**RESPONDENT'S MEMORANDUM
IN OPPOSITION TO PETITION FOR
A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

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Respondent prays that a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above entitled case on August 25, 1976 shall not issue.

**REASONS FOR DENYING THE
PETITION FOR A WRIT OF CERTIORARI**

I.

**THERE IS NO CONFLICT BETWEEN CIRCUITS AS
TO SCOPE OF REVIEW IN ADMIRALTY.**

This Court made it clear in *McAllister v. United States*, 348 U.S. 19, 20 (1954) that an appellate tribunal in an admiralty case is permitted to set aside the judgment below only when "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed."

Contrary to the assertion of Petitioner, there is no conflict between the Second and Ninth Circuit Courts of Appeal on this issue. Both Courts have specifically adopted the scope of review rule as set forth in *McAllister*.

In *re Grace Line, Inc.*, 517 F.2d 404, 406, 407 (2nd Cir. 1975); *Tupman Thurlow Co., Inc. v. S.S. Cap Castillo*, 490 F. 2d 302, 304 (2nd Cir. 1974); and *United States v. Alaska Steamship Co.*, 491 F.2d 1147, 1151 (9th Cir. 1974).

Moreover, Petitioner Glenview has no interest in a broader scope of review since it was appellee.

II.

**ADMIRALTY JURISDICTION WAS ADMITTED AND
INVOKED BY PETITIONER.**

Admiralty jurisdiction was invoked by Petitioner Glenview when it filed its Petition For Limitation Of Or Exoneration From Liability, as owner of a \$100 canoe. It was stipulated and agreed by the parties that the

accident occurred on a vessel within the navigable waters of the United States. The action was tried by the District Court on the theory of a maritime tort, and there was no objection. Nor did Glenview raise any issue on appeal pertaining to the applicability of maritime law.

CONCLUSION

Finally, the Petition filed herein fails to state any special and important reasons to support the granting of a review on Writ of Certiorari. The excellent decision of the United States Court of Appeals for the Seventh Circuit correctly states the law. No valid reason is set forth in the Petition which would call for an exercise of this Court's power of supervision.

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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